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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re T.A. et al., Persons Coming Under
the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.S.,

Defendant and Appellant.

B291975

(Los Angeles County
Super. Ct. No. DK14674)

APPEAL from orders of the Superior Court of Los Angeles
County, Stephen C. Marpet, Commissioner. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Brian Mahler, Deputy County
Counsel for Plaintiff and Respondent.

T.S. (mother) appeals from orders summarily denying her Welfare and Institutions Code¹ section 388 petitions, which sought reinstatement of her family reunification services and unmonitored and overnight visits with her five children. We find no abuse of discretion, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Referral and Investigation

Mother has five children: T.A. (born in March 2014), triplets T.H., D.H., and D.H., Jr. (born in March 2015), and C.H. (born in March 2016). D.H., Sr. (father) is the father of the four youngest children, and J.A. is the father of T.A.²

In December 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging that one of the triplets had fallen down the stairs. DCFS's investigation revealed the child was fine, but that mother had a history of marijuana use, and mother and father had a history of domestic violence. Mother said she no longer used drugs and agreed to drug test.

After canceling multiple drug tests, mother tested positive for amphetamines and methamphetamines on December 29, 2016. On January 17, 2017, DCFS removed the children from mother and placed them in foster care.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

² Father died in May 2017, during the pendency of these proceedings, and J.A. declined services. Thus, neither father is a party to this appeal.

The day DCFS removed the children, father went to mother's home and beat her up. Mother called the police but refused to seek a protective order.

B. Petition; Detention Hearing

In January 2017, DCFS filed a petition alleging jurisdiction over the children pursuant to section 300, subdivisions (a) and (b). The petition alleged that the parents had a history of domestic violence (counts a-1, b-2), and that mother had a history of marijuana use and was a current user of amphetamines and methamphetamines (count b-1). Subsequently, DCFS filed an amended petition adding an allegation that T.A.'s father had a history of mental and emotional problems, including a diagnosis of bipolar disorder, and therefore was incapable of caring for T.A.

At the January 2017 detention hearing, the juvenile court found a prima facie case for detaining the children and ordered them placed in foster care.

C. Jurisdiction/Disposition Investigation

In March 2017, mother was arrested for a probation violation on a prior conviction for possessing a controlled substance. Mother had been ordered to complete a drug program, but had not complied. She was sentenced to 30 days in county jail.

Between February and mid-April 2017, mother missed eight scheduled drug tests, and tested positive for methamphetamines and amphetamines twice.

D. Jurisdiction/Disposition Hearing

On May 2, 2017, the juvenile court sustained the allegations of the amended petition and ordered the children removed from mother's custody. The court ordered mother to undergo a psychological and psychiatric assessment, to drug test

weekly, and to participate in a six month drug/alcohol program with aftercare, a domestic violence support group, parenting classes, and individual counseling. Mother was granted monitored visitation with the children.

E. Six Month Review; Termination of Mother's Reunification Services

In August and November 2017, DCFS advised the court that mother had failed to enroll in court-ordered services and had missed 18 scheduled drug tests between May and September. Mother regularly visited the children, but her visits were described by DCFS as “problematic.” DCFS therefore recommended that the court terminate mother’s reunification services.

At the December 1, 2017 review hearing, the court found that mother’s progress toward reunification had been “minimal.” It therefore terminated her family reunification services and set a section 366.26 hearing in March 2018. The court subsequently continued the hearing to November 2018 to allow DCFS time to assess appropriate permanent plans for the children.

F. Post-Termination Events

Mother enrolled in a drug rehabilitation program in January 2018, but was terminated from the program after several weeks for threatening another client. Mother enrolled in a second residential drug treatment program through Shields For Families in February 2018.

In March 2018, DCFS reported that all five children had been placed with their paternal aunts, where they were doing well. The aunts wished to pursue adoption or legal guardianships.

G. Mother's Section 388 Petitions to Change Court Orders

On July 27, 2018, mother filed section 388 petitions, seeking reinstatement of her family reunification services and unmonitored and overnight visits with the children.³ In support, mother said she had completed many of the programs ordered by the court and was sober. Mother's documentary evidence demonstrated that mother had completed Shields For Families' substance abuse treatment program, which included courses in domestic violence, relapse prevention, and parenting, among others, in April 2016. Further, between March 16 and April 16, 2018, mother attended classes and groups daily, participated in individual counseling weekly, and had three negative drug tests.

The juvenile court denied mother's section 388 petitions without a hearing on August 3, 2018, finding that mother had failed to demonstrate sufficiently changed circumstances. Mother timely appealed.

DISCUSSION

Mother's sole contention on appeal is that the juvenile court abused its discretion by failing to conduct an evidentiary hearing on her section 388 petitions. For the reasons that follow, we find no abuse of discretion.

A. Legal Principles

Section 388 accords a parent the right to petition the juvenile court to modify any of its orders based upon changed circumstances or new evidence. (§ 388.) To obtain the requested

³ Mother filed separate petitions for each child. Each petition contained the same information and attached the same documents.

modification, the parent must demonstrate both a change of circumstance and that the proposed change of court order is in the best interests of the child. (§ 388; *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

The juvenile court must hold an evidentiary hearing on a section 388 petition only if the petitioner makes a prima facie showing that circumstances have changed since the prior court order and that the proposed change of court order will be in the child's best interests. (Cal. Rules of Court, rule 5.570(a), (d), (e); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) We review a juvenile court's decision to summarily deny a section 388 petition for abuse of discretion. (*In re G.B.*, at p. 1158; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

"Section 388 provides an 'escape mechanism' for parents facing termination of their parental rights by allowing the juvenile court to consider a legitimate change in the parent's circumstances after reunification services have been terminated. [Citation.] This procedural mechanism, viewed in the context of the dependency scheme as a whole, provides the parent due process while accommodating the child's right to stability and permanency. [Citation.] After reunification services have been terminated, it is presumed that continued out-of-home care is in the child's best interests. [Citation.] Section 388 allows a parent to rebut that presumption by demonstrating changed circumstances that would warrant modification of a prior court order. [Citation.]" (*In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.)

*B. The Juvenile Court Did Not Abuse Its Discretion by
Summarily Denying Mother's Section 388 Petitions*

Mother contends she made a prima facie showing of changed circumstances—namely, that she had completed many of her court-ordered services and was testing drug-free. She therefore urges that the juvenile court abused its discretion by summarily denying her section 388 petition.

We do not agree. Mother had a lengthy history of substance abuse, as evidenced by two positive drug tests in early March 2017, and her arrest the same month for a probation violation on a prior conviction for possession of controlled substances. Following her brief stint in county jail in March, mother failed to appear at more than 20 scheduled drug tests between mid-March and September 2017.

Against this backdrop, mother relies on her completion of a drug treatment program in April 2018 to demonstrate changed circumstances. But mother's drug treatment program lasted only two months, and she provided evidence of only three clean drug tests. Moreover, there is no evidence that mother remained drug-free between the completion of her program in mid-April and the filing of her section 388 petition in late July 2018. And, even as of July 2018—more than 18 months after the children were removed from her care—mother had failed to complete some elements of her case plan, including psychological and psychiatric testing and six months of drug rehabilitation and testing.

When a parent shows she is in the early stages of recovering from drug or alcohol addiction, juvenile courts typically find her circumstances to be “changing,” not “changed.” For example, in *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423–424, the court concluded that in light of the parent's lengthy

history of addiction, seven months of sobriety did not demonstrate changed circumstances. Similarly, in *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223, the court concluded that the parent's recent sobriety "reflects 'changing,' not changed, circumstances." (See also in *In re Casey D.* (1999) 70 Cal.App.4th 38, 49 [mother's four months of sobriety did not demonstrate changed circumstances]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform."].)

The present case is analogous to *In re Clifton B.* and *In re Ernesto R.* Here, in light of mother's long-term drug use, her completion of a two-month drug treatment program and three clean drug tests, while commendable, are not a sufficiently substantial change of circumstances to trigger an evidentiary hearing under section 388. The juvenile court did not err in so concluding.⁴

⁴ Because mother did not demonstrate a prima facie case of changed circumstances, we need not consider whether the proposed change of court orders was in the children's best interests.

DISPOSITION

The August 3, 2018 orders are affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.